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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/697,615	10/29/2003	Kenneth E. Trueba	10010217-3	9627

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FORT COLLINS, CO 80527-2400

EXAMINER
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MENDOZA, MICHAEL G

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 07/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/697,615

Applicant(s)

TRUEBA, KENNETH E.

Examiner

Michael G. Mendoza

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-30 and 32-57 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30 and 32-57 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments, see pgs. 12-13, filed 16 May, with respect to the rejection(s) of claim(s) 1-30 and 32-57 under 35 U.S.C. 102(b) and 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Voges 5894841.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-7, 10, 11, 13-16, 33, 36, 43, 45-47, 50-53, 56 and 57 are rejected under 35 U.S.C. 102(b) as being anticipated by Voges.

4. Voges teaches an applicator for delivering a bioactive composition, comprising: an inkjet dispenser 14 comprising an orifice 15, the inkjet dispenser further including a main body (14 + 15); a replaceable fluid reservoir 10, the replaceable fluid reservoir at least partially insertable through the body (11 + 12); a body orifice spacer 5; wherein the applicator is an inhaler; wherein the applicator is a pulmonary inhaler; wherein the inkjet dispenser is a piezoelectric droplet inkjet dispenser; wherein the spacer is external to the body (figs. 1, 2, & 4); wherein the inkjet dispenser is adapted to dispense droplets of the bioactive composition sized for respiratory inhalation; wherein the inkjet dispenser is

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adapted to dispense droplets of the bioactive composition sized for delivery to bronchial airways (col. 3, line 62-col. 4, line 33); wherein the spacer is a mouthpiece spacer or a nasal spacer and the inkjet dispenser is disposed within the spacer (fig. 2); a fluid conduit extending between the fluid reservoir and the inkjet dispenser (fig. 2), the fluid conduit adapted to deliver the bioactive composition from the fluid reservoir to the inkjet dispenser, the fluid conduit extending at least partially through the spacer; wherein the spacer is adapted to change a delivery direction (fig. 4); wherein the inkjet dispenser is a thermal droplet inkjet dispenser (col. 3, line 62-col. 4, line 33); a programmable controller 16 adapted to control the inkjet dispenser; and wherein the programmable controller is a microprocessor (col. 6, lines 45-50).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 8, 9, 12, 19-30, 32, 34, 35, 44, 48, and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Voges in view of Makiej, Jr. 5002048.

7. Voges teaches the inhaler as in the above rejected claims. It should be noted that Voges fails to teach multiple replaceable fluid reservoirs; wherein the reservoirs hold and deliver two or more bioactive compositions.

8. Makiej, Jr. teaches a common inhaler comprising multiple replaceable fluid reservoirs for administering medication from multiple aerosol containers (col. 1, lines 52-

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54). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the inhaler of Voges to include the fluid reservoirs of Makiej, Jr. to provide an inhalation device that facilitates administration of complementary medications (col. 1, lines 58-60).

9. Furthermore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use multiple reservoirs, since it has been held that mere duplication of essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

10. As to claims 28 and 29, Voges/Makiej teaches a controller. The Applicant has not positively claimed a program associated with the controller, computer, microprocessor to perform the function as recited. Therefore, the controller, of Voges/Makiej is capable or programmable to perform the functional limitation associated with the controller as recited in claims 28 and 29.

11. Claims 17, 18, 37-42, 54, and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Voges in view of McKinnon et al. 6190326.

12. Voges teaches the inhaler as in the above rejected claims. It should be noted that Voges fails to teach wherein the controller is programmable from a remote computer and the controller is programmable from a keypad mounted on an external surface.

13. McKinnon et al. teaches a common controller for accurately collecting information about a patient's respirator condition (col. 1 lines, 41-43). Therefore it would have been obvious to one of ordinary skill in the art to modify the controller of Voges to include the

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remote computer 18 and keypad 52 of McKinnon et al. to allow entry of the specifics of a treatment plan a physician (col. 5, lines 26-28).

### ***Contacts***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael G. Mendoza whose telephone number is (571) 272-4698. The examiner can normally be reached on Mon.-Fri. 8:00 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anh Tuan Nguyen can be reached on (571) 272-44963. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



MM



GLENN K. DAWSON  
PRIMARY EXAMINER